

SUBCOMMITTEE: SUBCOMMITTEE #1

HOUSE BILL NO. 1998

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Delegate Price)

A BILL to amend and reenact §§ 16.1-241 and 32.1-45.1 of the Code of Virginia, relating to exposure to bodily fluids; infection with human immunodeficiency virus or hepatitis B or C viruses; expedited testing.

Be it enacted by the General Assembly of Virginia:**1. That §§ 16.1-241 and 32.1-45.1 of the Code of Virginia are amended and reenacted as follows:****§ 16.1-241. Jurisdiction; consent for abortion.**

The judges of the juvenile and domestic relations district court elected or appointed under this law shall be conservators of the peace within the corporate limits of the cities and the boundaries of the counties for which they are respectively chosen and within one mile beyond the limits of such cities and counties. Except as hereinafter provided, each juvenile and domestic relations district court shall have, within the limits of the territory for which it is created, exclusive original jurisdiction, and within one mile beyond the limits of said city or county, concurrent jurisdiction with the juvenile court or courts of the adjoining city or county, over all cases, matters and proceedings involving:

A. The custody, visitation, support, control or disposition of a child:

1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent except where the jurisdiction of the juvenile court has been terminated or divested;

2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship;

2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian;

26 3. Whose custody, visitation or support is a subject of controversy or requires determination. In
27 such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction,
28 except as provided in § 16.1-244;

29 4. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-
30 1817 or whose parent or parents for good cause desire to be relieved of his care and custody;

31 5. Where the termination of residual parental rights and responsibilities is sought. In such cases
32 jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, as provided in
33 § 16.1-244;

34 6. Who is charged with a traffic infraction as defined in § 46.2-100; or

35 7. Who is alleged to have refused to take a blood test in violation of § 18.2-268.2.

36 In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated
37 in subsection B of § 16.1-269.1, and for any charges ancillary thereto, the jurisdiction of the juvenile court
38 shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that
39 the juvenile committed the act alleged and that the juvenile was 14 years of age or older at the time of the
40 commission of the alleged offense, and any matters related thereto. In any case in which the juvenile is
41 alleged to have committed a violent juvenile felony enumerated in subsection C of § 16.1-269.1, and for
42 all charges ancillary thereto, if the attorney for the Commonwealth has given notice as provided in
43 subsection C of § 16.1-269.1, the jurisdiction of the juvenile court shall be limited to conducting a
44 preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act
45 alleged and that the juvenile was 14 years of age or older at the time of the commission of the alleged
46 offense, and any matters related thereto. A determination by the juvenile court following a preliminary
47 hearing pursuant to subsection B or C of § 16.1-269.1 to certify a charge to the grand jury shall divest the
48 juvenile court of jurisdiction over the charge and any ancillary charge. In any case in which a transfer
49 hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile court determines to transfer the
50 case, jurisdiction of the juvenile court over the case shall be divested as provided in § 16.1-269.6.

51 In all other cases involving delinquent acts, and in cases in which an ancillary charge remains after
52 a violent juvenile felony charge has been dismissed or a violent juvenile felony has been reduced to a

53 lesser offense not constituting a violent juvenile felony, the jurisdiction of the juvenile court shall not be
54 divested unless there is a transfer pursuant to subsection A of § 16.1-269.1.

55 The authority of the juvenile court to adjudicate matters involving the custody, visitation, support,
56 control or disposition of a child shall not be limited to the consideration of petitions filed by a mother,
57 father or legal guardian but shall include petitions filed at any time by any party with a legitimate interest
58 therein. A party with a legitimate interest shall be broadly construed and shall include, but not be limited
59 to, grandparents, step-grandparents, stepparents, former stepparents, blood relatives and family members.
60 A party with a legitimate interest shall not include any person (i) whose parental rights have been
61 terminated by court order, either voluntarily or involuntarily, (ii) whose interest in the child derives from
62 or through a person whose parental rights have been terminated by court order, either voluntarily or
63 involuntarily, including, but not limited to, grandparents, stepparents, former stepparents, blood relatives
64 and family members, if the child subsequently has been legally adopted, except where a final order of
65 adoption is entered pursuant to § 63.2-1241, or (iii) who has been convicted of a violation of subsection
66 A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United
67 States, or any foreign jurisdiction, when the child who is the subject of the petition was conceived as a
68 result of such violation. The authority of the juvenile court to consider a petition involving the custody of
69 a child shall not be proscribed or limited where the child has previously been awarded to the custody of a
70 local board of social services.

71 B. The admission of minors for inpatient treatment in a mental health facility in accordance with
72 the provisions of Article 16 (§ 16.1-335 et seq.) and the involuntary admission of a person with mental
73 illness or judicial certification of eligibility for admission to a training center for persons with intellectual
74 disability in accordance with the provisions of Chapter 8 (§ 37.2-800 et seq.) of Title 37.2. Jurisdiction of
75 the involuntary admission and certification of adults shall be concurrent with the general district court.

76 C. Except as provided in subsections D and H, judicial consent to such activities as may require
77 parental consent may be given for a child who has been separated from his parents, guardian, legal
78 custodian or other person standing in loco parentis and is in the custody of the court when such consent is
79 required by law.

D. Judicial consent for emergency surgical or medical treatment for a child who is neither married nor has ever been married, when the consent of his parent, guardian, legal custodian or other person standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person standing in loco parentis (i) is not a resident of the Commonwealth, (ii) has his whereabouts unknown, (iii) cannot be consulted with promptness, reasonable under the circumstances, or (iv) fails to give such consent or provide such treatment when requested by the judge to do so.

E. Any person charged with deserting, abandoning or failing to provide support for any person in violation of law.

F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:

1. Who has been abused or neglected;

2. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817 or is otherwise before the court pursuant to subdivision A 4; or

3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court finds that such person has by overt act or omission induced, caused, encouraged or contributed to the conduct of the child complained of in the petition.

G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services that are required by law to be provided for that child or such child's parent, guardian, legal custodian or other person standing in loco parentis. Jurisdiction in such cases shall be concurrent with and not exclusive of that of courts having equity jurisdiction as provided in § 16.1-244.

H. Judicial consent to apply for a work permit for a child when such child is separated from his parents, legal guardian or other person standing in loco parentis.

I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or neglect of children or with any violation of law that causes or tends to cause a child to come within the purview of this law, or with any other offense against the person of a child. In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause.

107 J. All offenses in which one family or household member is charged with an offense in which
108 another family or household member is the victim and all offenses under § 18.2-49.1.

109 In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to
110 determining whether or not there is probable cause. Any objection based on jurisdiction under this
111 subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial, before
112 the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it shall be
113 conclusively waived for all purposes. Any such objection shall not affect or be grounds for challenging
114 directly or collaterally the jurisdiction of the court in which the case is tried.

115 K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily
116 relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such parental
117 rights. No such petition shall be accepted, however, after the child has been placed in the home of adoptive
118 parents.

119 L. Any person who seeks spousal support after having separated from his spouse. A decision under
120 this subdivision shall not be res judicata in any subsequent action for spousal support in a circuit court. A
121 circuit court shall have concurrent original jurisdiction in all causes of action under this subdivision.

122 M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1,
123 16.1-253.4, or 16.1-279.1, and all petitions filed for the purpose of obtaining an order of protection
124 pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10 if either the alleged victim or the respondent is a
125 juvenile.

126 N. Any person who escapes or remains away without proper authority from a residential care
127 facility in which he had been placed by the court or as a result of his commitment to the Virginia
128 Department of Juvenile Justice.

129 O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.).

130 P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 19 (§
131 63.2-1900 et seq.) of Title 63.2, or by another state in the same manner as if the orders were entered by a
132 juvenile and domestic relations district court upon the filing of a certified copy of such order in the juvenile
133 and domestic relations district court.

Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20. A circuit court shall have concurrent original jurisdiction to the extent provided for in § 20-49.2.

R. [Repealed.]

S. Petitions filed by school boards against parents pursuant to §§ 16.1-241.2 and 22.1-279.3.

T. Petitions to enforce any request for information or subpoena that is not complied with or to review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect pursuant to § 63.2-1526.

U. Petitions filed in connection with parental placement adoption consent hearings pursuant to § 63.2-1233. Such proceedings shall be advanced on the docket so as to be heard by the court within 10 days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

V. Petitions filed for the purpose of obtaining the court's assistance with the execution of consent to an adoption when the consent to an adoption is executed pursuant to the laws of another state and the laws of that state provide for the execution of consent to an adoption in the court of the Commonwealth.

W. Petitions filed by a juvenile seeking judicial authorization for a physician to perform an abortion if a minor elects not to seek consent of an authorized person.

After a hearing, a judge shall issue an order authorizing a physician to perform an abortion, without the consent of any authorized person, if he finds that (i) the minor is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independent of the wishes of any authorized person, or (ii) the minor is not mature enough or well enough informed to make such decision, but the desired abortion would be in her best interest.

If the judge authorizes an abortion based on the best interests of the minor, such order shall expressly state that such authorization is subject to the physician or his agent giving notice of intent to perform the abortion; however, no such notice shall be required if the judge finds that such notice would not be in the best interest of the minor. In determining whether notice is in the best interest of the minor, the judge shall consider the totality of the circumstances; however, he shall find that notice is not in the best interest of the minor if he finds that (i) one or more authorized persons with whom the minor regularly

and customarily resides is abusive or neglectful, and (ii) every other authorized person, if any, is either abusive or neglectful or has refused to accept responsibility as parent, legal guardian, custodian or person standing in loco parentis.

The minor may participate in the court proceedings on her own behalf, and the court may appoint a guardian ad litem for the minor. The court shall advise the minor that she has a right to counsel and shall, upon her request, appoint counsel for her.

Notwithstanding any other provision of law, the provisions of this subsection shall govern proceedings relating to consent for a minor's abortion. Court proceedings under this subsection and records of such proceedings shall be confidential. Such proceedings shall be given precedence over other pending matters so that the court may reach a decision promptly and without delay in order to serve the best interests of the minor. Court proceedings under this subsection shall be heard and decided as soon as practicable but in no event later than four days after the petition is filed.

An expedited confidential appeal to the circuit court shall be available to any minor for whom the court denies an order authorizing an abortion without consent or without notice. Any such appeal shall be heard and decided no later than five days after the appeal is filed. The time periods required by this subsection shall be subject to subsection B of § 1-210. An order authorizing an abortion without consent or without notice shall not be subject to appeal.

No filing fees shall be required of the minor at trial or upon appeal.

If either the original court or the circuit court fails to act within the time periods required by this subsection, the court before which the proceeding is pending shall immediately authorize a physician to perform the abortion without consent of or notice to an authorized person.

Nothing contained in this subsection shall be construed to authorize a physician to perform an abortion on a minor in circumstances or in a manner that would be unlawful if performed on an adult woman.

A physician shall not knowingly perform an abortion upon an unemancipated minor unless consent has been obtained or the minor delivers to the physician a court order entered pursuant to this section and the physician or his agent provides such notice as such order may require. However, neither consent nor

judicial authorization nor notice shall be required if the minor declares that she is abused or neglected and the attending physician has reason to suspect that the minor may be an abused or neglected child as defined in § 63.2-100 and reports the suspected abuse or neglect in accordance with § 63.2-1509; or if there is a medical emergency, in which case the attending physician shall certify the facts justifying the exception in the minor's medical record.

For purposes of this subsection:

"Authorization" means the minor has delivered to the physician a notarized, written statement signed by an authorized person that the authorized person knows of the minor's intent to have an abortion and consents to such abortion being performed on the minor.

"Authorized person" means (i) a parent or duly appointed legal guardian or custodian of the minor or (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling with whom the minor regularly and customarily resides and who has care and control of the minor. Any person who knows he is not an authorized person and who knowingly and willfully signs an authorization statement consenting to an abortion for a minor is guilty of a Class 3 misdemeanor.

"Consent" means that (i) the physician has given notice of intent to perform the abortion and has received authorization from an authorized person, or (ii) at least one authorized person is present with the minor seeking the abortion and provides written authorization to the physician, which shall be witnessed by the physician or an agent thereof. In either case, the written authorization shall be incorporated into the minor's medical record and maintained as a part thereof.

"Medical emergency" means any condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of the pregnant minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function.

"Notice of intent to perform the abortion" means that (i) the physician or his agent has given actual notice of his intention to perform such abortion to an authorized person, either in person or by telephone, at least 24 hours previous to the performance of the abortion; or (ii) the physician or his agent, after a reasonable effort to notify an authorized person, has mailed notice to an authorized person by certified

mail, addressed to such person at his usual place of abode, with return receipt requested, at least 72 hours prior to the performance of the abortion.

"Perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical procedure or to induce a miscarriage as provided in § 18.2-72, 18.2-73, or 18.2-74.

"Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid marriage, even though the marriage may have been terminated by dissolution; (ii) active duty with any of the Armed Forces of the United States; (iii) willingly living separate and apart from his or her parents or guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an order of emancipation pursuant to Article 15 (§ 16.1-331 et seq.).

X. Petitions filed pursuant to Article 17 (§ 16.1-349 et seq.) relating to standby guardians for minor children.

Y. Petitions involving minors filed pursuant to § 32.1-45.1 relating to obtaining a blood specimen or test results.

The ages specified in this law refer to the age of the child at the time of the acts complained of in the petition.

Notwithstanding any other provision of law, no fees shall be charged by a sheriff for the service of any process in a proceeding pursuant to subdivision A 3, except as provided in subdivision A 6 of § 17.1-272, or subsection B, D, M, or R.

Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion in violation of subsection W shall be guilty of a Class 3 misdemeanor.

§ 32.1-45.1. Deemed consent to testing and release of test results related to infection with human immunodeficiency virus or hepatitis B or C viruses.

A. Whenever any health care provider, or any person employed by or under the direction and control of a health care provider, is directly exposed to body fluids of a patient in a manner that may, according to the then current guidelines of the Centers for Disease Control and Prevention, transmit human immunodeficiency virus or hepatitis B or C viruses, the patient whose body fluids were involved in the exposure shall be deemed to have consented to testing for infection with human immunodeficiency virus

or hepatitis B or C viruses. Such patient shall also be deemed to have consented to the release of such test results to the person who was exposed. In other than emergency situations, it shall be the responsibility of the health care provider to inform patients of this provision prior to providing them with health care services which create a risk of such exposure.

B. Whenever any patient is directly exposed to body fluids of a health care provider, or of any person employed by or under the direction and control of a health care provider, in a manner that may, according to the then current guidelines of the Centers for Disease Control and Prevention, transmit human immunodeficiency virus or hepatitis B or C viruses, the person whose body fluids were involved in the exposure shall be deemed to have consented to testing for infection with human immunodeficiency virus or hepatitis B or C viruses. Such person shall also be deemed to have consented to the release of such test results to the patient who was exposed.

C. For the purposes of this section, "health care provider" means any person, facility or agency licensed or certified to provide care or treatment by the Department of Health, Department of Behavioral Health and Developmental Services, Department of Rehabilitative Services, or the Department of Social Services, any person licensed or certified by a health regulatory board within the Department of Health Professions except for the Boards of Funeral Directors and Embalmers and Veterinary Medicine or any personal care agency contracting with the Department of Medical Assistance Services.

D. "Health care provider," as defined in subsection C, shall be deemed to include any person who renders emergency care or assistance, without compensation and in good faith, at the scene of an accident, fire, or any life-threatening emergency, or while en route therefrom to any hospital, medical clinic or doctor's office during the period while rendering such emergency care or assistance. The Department of Health shall provide appropriate counseling and opportunity for face-to-face disclosure of any test results to any such person.

E. Whenever any law-enforcement officer, salaried or volunteer firefighter, or salaried or volunteer emergency medical services provider is directly exposed to body fluids of a person in a manner that may, according to the then current guidelines of the Centers for Disease Control and Prevention, transmit human immunodeficiency virus or hepatitis B or C viruses, the person whose body fluids were involved in the

269 exposure shall be deemed to have consented to testing for infection with human immunodeficiency virus
270 or hepatitis B or C viruses. Such person shall also be deemed to have consented to the release of such test
271 results to the person who was exposed.

272 F. Whenever a person is directly exposed to the body fluids of a law-enforcement officer, salaried
273 or volunteer firefighter, or salaried or volunteer emergency medical services provider in a manner that
274 may, according to the then current guidelines of the Centers for Disease Control and Prevention, transmit
275 human immunodeficiency virus or hepatitis B or C viruses, the person whose body fluids were involved
276 in the exposure shall be deemed to have consented to testing for infection with human immunodeficiency
277 virus or hepatitis B or C viruses. The law-enforcement officer, salaried or volunteer firefighter, or salaried
278 or volunteer emergency medical services provider shall also be deemed to have consented to the release
279 of such test results to the person who was exposed.

280 G. For the purposes of this section, "law-enforcement officer" means a person who is both (i)
281 engaged in his public duty at the time of such exposure and (ii) employed by any sheriff's office, any adult
282 or youth correctional facility, or any state or local law-enforcement agency, or any agency or department
283 under the direction and control of the Commonwealth or any local governing body that employs persons
284 who have law-enforcement authority.

285 H. Whenever any school board employee is directly exposed to body fluids of any person in a
286 manner that may, according to the then current guidelines of the Centers for Disease Control and
287 Prevention, transmit human immunodeficiency virus or hepatitis B or C viruses, the person whose body
288 fluids were involved in the exposure shall be deemed to have consented to testing for infection with human
289 immunodeficiency virus or hepatitis B or C viruses. Such person shall also be deemed to have consented
290 to the release of such test results to the school board employee who was exposed. ~~If the person whose~~
291 ~~blood specimen is sought for testing is a minor, the parent, guardian, or person standing in loco parentis~~
292 ~~of such minor shall be notified prior to initiating such testing. In other than emergency situations, it shall~~
293 ~~be the responsibility of the school board employee to inform the person of this provision prior to the~~
294 ~~contact that creates a risk of such exposure.~~

295 I. Whenever any person is directly exposed to the body fluids of a school board employee in a
296 manner that may, according to the then current guidelines of the Centers for Disease Control and
297 Prevention, transmit human immunodeficiency virus or hepatitis B or C viruses, the school board
298 employee whose body fluids were involved in the exposure shall be deemed to have consented to testing
299 for infection with human immunodeficiency virus or hepatitis B or C viruses. The school board employee
300 shall also be deemed to have consented to the release of such test results to the person.

301 J. For the purposes of this section, "school board employee" means a person who is both (i) acting
302 in the course of employment at the time of such exposure and (ii) employed by any local school board in
303 the Commonwealth.

304 K. For purposes of this section, if the person whose blood specimen is sought for testing is a minor,
305 ~~and that minor refuses to provide such specimen,~~ consent for obtaining such specimen shall be obtained
306 from the parent, guardian, or person standing in loco parentis of such minor prior to initiating such testing.
307 If the parent or guardian or person standing in loco parentis withholds such consent, or is not reasonably
308 available, the person potentially exposed to the human immunodeficiency virus or hepatitis B or C viruses,
309 or the employer of such person, may petition the juvenile and domestic relations district court in the county
310 or city where the minor resides or resided, or, in the case of a nonresident, the county or city where the
311 health care provider, law-enforcement agency or school board has its principal office or, in the case of a
312 health care provider rendering emergency care pursuant to subsection D, the county or city where the
313 exposure occurred, for an order requiring the minor to provide a blood specimen or to submit to testing
314 and to disclose the test results in accordance with this section.

315 L. Except as provided in subsection K, if the person whose blood specimen is sought for testing
316 refuses to provide such specimen, any person identified by this section who was potentially exposed to
317 the human immunodeficiency virus or the hepatitis B or C viruses in the manner described by this section,
318 or the employer of such person, may petition, on a form to be provided by the Office of the Executive
319 Secretary of the Supreme Court of Virginia, the general district court of the county or city in which the
320 person whose specimen is sought resides or resided, or, in the case of a nonresident, the county or city
321 where the health care provider, law-enforcement agency or school board has its principal office or, in the

case of a health care provider rendering emergency care pursuant to subsection D, the county or city where the exposure occurred, for an order requiring the person to provide a blood specimen or to submit to testing and to disclose the test results in accordance with this section. A hearing on such a petition shall be given precedence on the docket so as to be heard by the court within 48 hours of the filing of the petition, or, if the court is closed during such time period, such petition shall be heard on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. A copy of the petition, which shall specify the date and location of the hearing, shall be provided to the person whose specimen is sought. At any hearing before the court, the person whose specimen is sought or his counsel may appear. The court ~~shall~~ may be advised by the Commissioner or his designee prior to entering any testing order. If the general district court determines that there is probable cause to believe that a person identified by this section has been exposed in the manner prescribed by this section, the court shall issue an order requiring the person whose bodily fluids were involved in the exposure to provide a blood specimen or to submit to testing and to disclose the test results in accordance with this section. If a testing order is issued, both the petitioner and the person from whom the blood specimen is sought shall receive counseling and opportunity for face-to-face disclosure of any test results by a licensed practitioner or trained counselor.

M. Any person who is subject to a testing order may appeal the order of the general district court to the circuit court of the same jurisdiction within 10 days of receiving notice of the order. Any hearing conducted pursuant to this subsection shall be held in camera as soon as practicable. The record shall be sealed. The order of the circuit court shall be final and nonappealable.

N. No specimen obtained pursuant to this section shall be tested for any purpose other than for the purpose provided for in this section, nor shall the specimen or the results of any testing pursuant to this section be used for any purpose in any criminal matter or investigation. Any violation of this subsection shall constitute reversible error in any criminal case in which the specimen or results were used.

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